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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA 217/2013**

TEJ SINGH ..... Appellant

Through: Mr. G.K. Srivastava, Adv.

versus

PRESIDENT SERVICE INSTITUTE ..... Respondent

Through: None

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

O R D E R

% 12.04.2013

1. The appellant before us was working with the respondent/President Service Institute and was posted as Driver in a bus of the said Institute. On 20th April, 2005, when the bus being driven by the respondent was checked by two officers of the respondent Institute at Mayur Vihar turning, one passenger, namely, Devender Sahu was found travelling in the bus without any valid ticket/pass. When the bus moved after checking, it was noticed by the officers of the respondent through the rear side glass that there was one more person travelling in the bus. Pursuant to this, the bus was followed and re-checked. A lady aged about 40 years was found concealing herself behind the rear seat of the bus. The following Articles of Charge were then served upon the respondent:-

" Article-1

1. Shri Tej Singh, Driver and Shri Santosh Roy, Conductor,

employed in SI Welfare Bus Service.

2. On 20 April, 2005, at about 1600 hrs, 626515 Sgt. K.V. Rathi KV IAF (P) of 412 AF Station was detailed to carry out the check of NOIDA PSI Welfare Buses. He along with Cpl Vijay Raj B IAF (P) went out to NOIDA route to carry out the said check. At about 1855 hrs, when Sgt. K.V. Rathi checked the second bus regn No. 4919 Tata Coach, at Mayur Vihar turning. On giving indication to stop, the bus stopped. On checking he found that one passenger Shri Devinder Sahu is available in the bus without valid pass/ticket. On further inquiry, it was revealed that Shri Devinder Sahu had also travelled in SI Welfare bus from AIR HQ (VB) to NOIDA without any valid pass or ticket.

3. Shri Tej Singh Driver and Shri Santosh Roy, Conductor, have, by the above act, committed an act of unbecoming a Non-Public fund employee and thereby violated Rule 16(2) of terms and conditions NPF employees.

ARTICLE-2

1. Shri Tej Singh, Driver and Shri Santosh Roy, Conductor, employed in SI Welfare Bus Service.

2. On 20 Apr 05, at about 1855 hrs, 626515-G Sgt. Rathi K.V. IAF (P) along with Cpl Vijay Raj B IAF (P) checked the PSI bus of NOIDA Route, which was driven by Shri Tej Singh, and Shri Santosh Rai was a conductor. He checked the bus and found one passenger named Shri Devender Sahu without valid pass or ticket. However, when the bus had moved, he could see through the rear side glasses fitted with bus that some more passengers were also travelling. On having doubt the bus was followed. On the way the bus was stopped by police staff and again a thorough check was carried out. This time it was found that a lady aged approximately 40 years named Mamta Khan was concealing herself behind the rear seat. On inquiry, it was found that she got inside the bus from NOIDA. She stated that

she earns her livelihood by doing unsocial things for which she got inside the bus.

3. Shri Tej Singh, Driver and Shri Santosh Roy, Conductor were well aware that Ms. Mamta Khan had boarded the bus and concealed herself behind the rear seats of the bus. However, Shri Tej Singh did not inform police team about Ms. Mamta Khan when she could not be traced out by police team in first attempt as stated in Article-1 to imputation of charges.

4. Shri Tej Singh, Driver and Shri Santosh Roy, Conductor have, by the above act, committed an act of unbecoming of a Non-Public fund employee and thereby violated Rule 16(2) of terms and conditions of NPF employees.

ARTICLE-3

1. Shri Tej Singh, Driver and Shri Santosh Roy, Conductor employed in SI Welfare Bus Service.

2. On 20 Apr 05, at about 18:55 hrs, the bus No.4919 of NOIDA route was checked by Sgt. Rathi K.V IAF (P) along with Cpl Vijay Raj B IAF at about 18:55 hrs between NOIDA and Air HQ (VB). On checking it was found that Ms. Mamta Khan and Shri Devender Sahu were travelling without valid pass or ticket and involved in immoral and unsocial activity. Even after seeing this happening, Shri Tej Singh, Driver and Shri Santosh Roy, Conductor failed to object it and they were freely doing such activities which they were not supposed to do while travelling in Air Force Welfare Bus.

3. Shri Tej Singh, Driver and Shri Santosh Roy, Conductor have, by the above act, committed an act of unbecoming of a Non-Public fund employee and thereby violated Rule 16(2) of terms and conditions of NPF employees."

2. Pursuant to a departmental inquiry held by the respondent, the appellant was

removed from service. The appellant raised an industrial dispute disputing termination of his services. The Labour Court, vide its finding on the preliminary issue held that the inquiry conducted against the appellant was irregular and illegal. Consequently, the parties were given opportunity to lead evidence before the Labour Court. Vide detailed order dated 14th May, 2009, the Labour Court held Charges 1 and 2 to be established. Charge No.3 was held to be not proved. As regards punishment awarded to the appellant, the Labour Court was of the view that considering the charges, the said punishment could not be said to be disproportionate to the misconduct committed by the appellant. Being aggrieved from the Award of the Labour Court, the appellant filed a writ petition. The learned Single Judge, vide order dated 7th February, 2013 dismissed the writ petition filed by the appellant. Aggrieved from the dismissal of the writ petition, the appellant is before us by way of this appeal.

3. The only contention made by the learned counsel for the appellant is that there is no legally admissible evidence produced by the respondent to prove even Charges No.1 and 2 which the Labour Court held to be proved.

4. It is an admitted case that Shri Devender Sahu as well as the lady mentioned above had travelled in the bus being driven by the appellant on 20th April, 2005 and when the bus was checked, both of them were found in the bus. The only question which comes up for consideration is as to whether there was any evidence produced by the Management to prove that it was the appellant who either alone or along with the Conductor, was responsible for Mr.Devender Sahu and the above referred woman travelling in the bus without any valid ticket/pass. In his statement before the Inquiry Officer, Shri Devender Sahu, inter alia, stated as under:-

> "... Bus driver and conductor of SI Welfare Bus permitted me to travel from Air HQ to Noida and Noida to Air HQ by bus. On the way while coming back from Noida to Air HQ, a lady raised hand to stop the bus. To see that lady the driver told 'She is prostitute and you will get her easily'. Then he permited her to sit inside the bus. That lady was around 30 years of age sat near me and started teasing me. She asked for Rs.100/- from me to establish physical relation with me and I gave her same amount. It seemed that she was known to the driver and conductor. Therefore they stopped the bus for her. Driver and conductor saw me giving money to the lady but they did not stop me to give the money. Around 1853 hours when I was talking to her a Sergeant and a Corporal of IAF Police gave signal to stop the bus, after they had started checking and during the checking they found me without ticket and pass. During the checking the lady named Mamta Khan hid behind the seat and IAF Police did not see her. I, driver and conductor did not tell about the lady to the IAF Police. When the bus covered a little distance, the IAF Police gave a signal to stop it again. When driver stopped the bus Mamta Khan hid behind the seat. That time IAF Police traced her. When they asked Mamta Khan she told that she boarded the bus before Mayur Vihar and she did not buy a ticket. She also told that she was involved with immoral activities and prostitution to nurture and look after her children and she boarded the bus for that purpose...."

5. The aforesaid statement purports to be signed by the Assistant Presiding Officer, the Conductor, the Defence Assistant and the appellant Tej Singh.

6. In his statement before the Inquiry Officer, the Conductor Mr.Devender Sahu, inter alia, stated as under:-

"3. When the bus was coming back from the Noida, Devender Sahu boarded the bus and I did not give him a ticket that time also. When I asked him about the ticket he told that he had no money to buy a ticket. Before the red light of Mayur Vihar driver stopped the bus and called a lady who was standing opposite side of the road. He opened the door and boarded her on the bus. When I asked him the reason for giving her lift in the bus then he replied that he had some task with her and I should keep quite. The bus has an automatic hydraulic door and handle of this door is near to the driver seat, by the help of this driver can open and close the door. Before boarding her on the bus the driver talked with that lady. After seated her on the bus he started the bus. After that Devender Sahu who was seating on front seat started talking with that lady. When I objected "No illegal activities will be committed in my bus" then Tej Singh driver told: nothing bad will happen with you, if anything happen bad, I will handle it.". After that Devender Sahu gave Rs.100/- which he borrowed from Tej Signh driver. After 5-10 minutes one Sergeant and 01 Corporal of IAF Police got the bus stopped.

When IAF Police got stopped the bus the driver told that lady to hide behind and that lady hide behind the seat. She was not traced during the checking by IAF Police IAF Police asked my and Devender Sahu's name and inquired with us. When they went the bus stopped after covering little distance. I knew that IAF Police was coming after our bus. IAF Police stopped their vehicle in the back side of our bus. When they again checked the bus they traced a lady whom I did not give a ticket IAF Police told her to get down from the bus and they called me. Devender Sahu and Tej Singh to the guard room where they took our statement.

7. It would, thus, be seen that if the aforesaid statements are taken into consideration, there is over-whelming evidence to prove that it was the appellant who had allowed the lady found travelling in the bus, to board the bus being driven by him. He stopped the bus on seeing that lady, permitted her to get inside and told Mr.Devender Sahu that he was a prostitute. The appellant as well as the Conductor Sahu giving money to the lady but did not stop him from doing so. As per the Conductor of the bus, even the money which Mr.Devender Sahu paid to the woman was borrowed by him from the appellant. When the officers of IAF stopped the bus for checking, the appellant asked the woman to hide behind the seat and that is why she could not be noticed at the time of first checking by the officers. Thus, according to these witnesses, not only did the appellant allow the woman to board the bus, he also encouraged immoral activity in the bus being driven by him.

8. Since the record of the inquiry has not been filed before us, we cannot verify whether the appellant was given an opportunity to cross examine these witnesses or not. The Labour Court noted that the inquiry proceedings were silent in this regard and on that basis alone, presumed that no opportunity was granted to the appellant to cross examine these witnesses and accordingly set aside the inquiry. We notice from a perusal of the reply filed by the respondent before the Labour Court is that a specific reference to the statement of these witnesses was made in the reply. To the extent it is relevant, the reply filed before the Labour Court reads as under:-

> "Shri Devinder Sahu had stated before duly constituted Board of Inquiry that he traveled from Air HQ to NOIDA and back

without ticket with the consent of Bus driver and conductor. He also stated in his statement before Board of Inquiry that a lady named Mamta Khan had boarded the bus before Mayur Vihar with the consent of bus driver and conductor. When police party was searching the bus, the lady had hidden behind the rear seats of the bus which was neither told by bus driver nor conductor to the police party. The police personnel caught driver and conductor red handed. Mamta Khan had admitted before police party that she was a prostitute and does not this for her livelihood. It is therefore wrong in the part of claimant that he was called by Sgt. KV Rathi and asked to sign some papers. A copy of statement of Shri Devinder Sahu is annexed as **Annexure A.** It is further submitted that Shri Santosh Roy, bus conductor had also stated in his statement before duly constituted Board of inquiry that the door of bus is operated by an automatic lydraulic door handle fitted in front of driver and operated by driver only to open and close the door. He also stated in his statement that driver stopped the bus taked to Mamta Khan, made her to sit in the bus and moved the bus further. ON the objection of bus conductor that no illegal thing will take place in his bus, Shri Tej Singh had stated that nothing will happen to you and in case of anything I shall bear upon. Thereafter, as per the statement of bus conductor, Shri Devinder Sahu had borrowed hundred rupees from Shri Tej Singh and given to Mamta Khan. The bus conductor had also stated in his statement that Mamta Khan was hiding herself behind the rear seats of the bus on the advice of the claimant. It is pertinent to mention that number of evidence came before duly constituted Board of Inquiry which point out deep involvement of claimant and bus conductor in the matter."

9. Perusal of the record of the Labour Court shows that no rejoinder was filed by the appellant to the reply and, therefore, the averments made in the reply

remained uncontroverted. Even if we exclude the above referred statements from consideration, we find that the Labour Court found evidence in the form of statements of MW-1 K.V. Rathi, MW-2 K.P.K.Kutty and MW-3 Vijay Raj. The Labour Court found that as per the Charter of Duty which the appellant had duly signed, he was not supposed to allow any unauthorized person to board in the bus. The Labour Court rejected the contention of the appellant that the said Charter of Duty Ex.MW2/1 was a fabricated document. It was also noticed by the Labour Court that as per the Charter of Duty, the appellant was to intimate the defect, if any, in the bus to the Manager but despite that no such intimation was given by the appellant at any point time of time. The Labour Court, on appreciation of the evidence produced before it also concluded that the appellant had allowed Shri Devender Sahu and the above referred woman to travel in the bus without any ticket or pass. In this regard, he noticed that the appellant had admitted the presence of Shri Devender Sahu as well as the woman in question in the bus at the time it was searched by the officers of the respondent.

10. In ***Syed Yakoob v. K.S. Radhakrishnan*** [AIR (1964) SC 477], Supreme Court identified the limitations of Certiorari jurisdiction of the High Court under Article 226 of the Constitution in the following terms:-

> "The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals;

these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to

> sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised."

In ***Swaran Singh v. State of Punjab*** [(1976) 2 SCC 868], Supreme Court, inter alia, held as under:-

> "In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

11. On a consideration of the material available on record, we have no reasonable ground to interfere with the finding recorded by the Labour Court on Charge No.1 & 2. In our view, it cannot be said that the finding recorded by the Labour Court on Charge No.1 & 2 was based on no evidence at all. Once it is

found that there was some evidence to prove the charges served upon the appellant, the writ court cannot go into adequacy or otherwise of such evidence and consequently cannot go behind the finding recorded by the Labour Court. As regards, punishment, we are of the view that considering the facts and circumstances of the case, the penalty imposed upon the appellant cannot be said to be so disproportionate to the charges proved against him as would shock the conscience of the Court. Therefore, we find no justification even for interfering with the penalty imposed upon the appellant.

For the reasons stated hereinabove, we find no merit in the appeal. The appeal is dismissed. All the pending applications also stand disposed of.

CHIEF JUSTICE

V.K. JAIN, J

APRIL 12, 2013

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